

REMARKS

This is responsive to the Office Action dated December 2, 2005 in which the Examiner rejects all the pending claims as being obvious over combinations of Hitzeman (US Patent No. 6,670,312), McGrew (US Patent No. 6,717,939), Mizuta et al. (US Patent No. 6,584,110), Girard (US Publication No. 2002/0176404), Voit et al. (US Patent No. 6,295,292), Osman (US Patent No. 6,801,523), Gordon et al. (US Patent No. 4,905,273), Smith (US Publication No. 2003/0123632) and Galvin (US Patent No. 6,134,315), and under 35 USC §103(a). Additionally, the Examiner rejected Claims 11 and 13 under 35 USC §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner also rejected the application because the formal drawings were not in compliance with 37 CFR §1.121(d). Applicants respectfully traverse the rejections, as explained in detail below.

First, applicant's note a brief interview took place between a law clerk for the undersigned and the Examiner on February 17, 2006. Pursuant to instructions from the undersigned, the law clerk requested certain citations, which the examiner provided in a paper dated February 27, 2006.

Dependent Claims 11 and 13 have been amended herein to more particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Thus, Applicants believe the objections to those claims on the basis of 35 USC §112 have been overcome.

Formal drawings in compliance with 37 FR §1.121(d) are submitted herewith to overcome any objection the Examiner has on that basis.

The Examiner rejected independent claim 1 on the basis that Hitzeman teaches “a database for storing a category of telephone numbers representing telephone calls to be placed over a data network in packet switch format” (Office Action, page 4). The Examiner further rejected independent claims 7, 10, 19 and 25 for the same reason.

Applicants respectfully disagree with the Examiner because Hitzeman does not teach a database for storing numbers of phone calls to be placed over the packet switched network, wherein those calls could be placed over either the packet switched network on the telephone network. Hitzeman teaches a database that determines whether a specific phone, the “target telephone”, is accessible over a network, and if so, regardless of anything else, sends it over the packet network. (column 4, lines 34-36). When the switch in Hitzeman determines that a target phone can be connected over the packet network, the default quality of service parameters are recalled from the database and used for the telephone call over the packet network(column 5, lines 19-28).

In the present invention, the target telephone can be reached over the packet network or the telephone network, but the system may still choose to send the call over the telephone network in the event that such a procedure is cheaper, for example. (p. 29) Thus, in applicant’s invention, there is a two tier decision making process. First, a decision is made whether to use the packet or telephone network, and second, another decision is made as to which gateways on the packet switched network should be used. But even though these two decisions are made, the called phone can be reached either via the data network or the phone network.

Hitzemen shows a system that always sends the call over the packet network, as long as that is possible. Since McGrew does not add the foregoing two tier decision feature, the

combination does not yield the claimed invention, and the rejections of claims 1,2,7,19,20,22,25,28,37-42,and 49-54 should be withdrawn.

Additionally, Applicants respectfully disagree with the Examiner that a person of ordinary skill in the art would know to combine the invention set forth by Hitzeman with the invention set forth by McGrew which is the basis for the Examiner's rejection of claims 1-11, 16-45, and 49-54. The invention disclosed by Hitzeman is a communication system on a **data packet network** whereby variable levels of quality of service are chosen by the user so that by choosing a lower quality of service, the user pays less money for the call, saving the user money (column 2, lines 64-66). The invention disclosed by McGrew is a call routing system using a circuit identification code to choose call gateways and call routes to prevent disruption of telecommunication services and improve the quality of communication among and between **data packet networks and circuit networks** (column 2, lines 10-18). One skilled in the art would have no need to combine the two inventions because the invention disclosed by McGrew address the problems Hitzeman's invention solves.

McGrew's invention improves the quality of telecommunication in a cost efficient way such that there would be **no need for alternative levels of telecommunication quality** (column 1, line 48 – column 2, line 12). Therefore, McGrew's invention allows for consistent high quality telecommunications between data packet networks and circuit networks using a virtual circuit identification to make the packet network appear like a circuit based network in order to interact with the circuit networks (column 4, lines 9-12). In Hitzeman's invention, either a gateway or a switch evaluates a quality of service code entered by the user to set the telecommunication within the proper quality boundaries (column 5, lines 18-28; column 6, lines 11-18). There is **no guarantee of quality levels in Hitzeman's invention**, rather, if the desired

level of quality is not available, the user would be alerted and would have the option to place the communication at a lower level of quality, place the call later, or place the call over a circuit-switched network (column 6, lines 23-33). In other words, Hitzeman's invention is made **solely for quality control of data networks**. Hence, McGrew's invention solves all the issues presented in Hitzeman's invention by aimed at improving telecommunications and providing consistently high quality between data and circuit networks. Thus, one with ordinary skill in the art would not combine the two inventions. Therefore, the Examiner's rejections of claims 1-11, 16-45, and 49-54 have been respectfully traversed.

Examiner rejected claim 12 on the basis that Osman teaches "a switch connected directly to a device initiating calls, the router being programmed to examine dialed number associated with calls prior to the calls reaching a PSTN" (Office Action, page 12). Osman's does not want calls to be made through a PSTN, rather, Osman's intent is to have all calls made over an IP network (column 7, line 3 – column 8, line 6). Osman only mentions completing a call over a PSTN when the attempt to make the connection through the IP network was unsuccessful (column 8, lines 19-24). Presumably, the user tries to connect over the IP network again. Hence, in Osman, "calls" are not reaching the PSTN rather, **only calls that were unsuccessful over the IP network can reach a PSTN if the user so chooses**. In Applicant's invention, in contrast, a router is sending the calls directly to a PSTN; the router is programmed to send some long distance calls directly over the packet switching network. Hence, the router may choose either network, even when both are available.

Therefore, Applicants respectfully submit that the above feature is not taught by Osman. Applicants respectfully submit that independent claim 12 is patentable at least because of this distinguishing feature. At least for the same reasons, all dependent claims (claims 13-15 and 46-

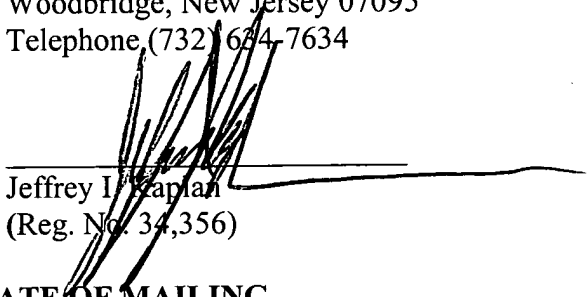
48) are also believed patentable, as each of them inherits this distinguishing feature from the aforementioned independent claim.

Applicants respectfully request reconsideration and allowance in view of the above remarks and amendments. The Examiner is authorized to deduct additional fees believed due from our Deposit Account No. 11-0223.

Respectfully submitted,

KAPLAN GILMAN GIBSON & DERNIER LLP
900 Route 9 North, Suite 504
Woodbridge, New Jersey 07095
Telephone (732) 624-7634

Dated: March 10, 2006


Jeffrey I. Kaplan
(Reg. No. 34,356)

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail, in a postage prepaid envelope, addressed to Mail Stop: Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on March 6, 2006.

Dated March 10, 2006 Signed Ute H. Wojtkowski Print Name Ute H. Wojtkowski